



FEDERAL ELECTION COMMISSION
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MEMORANDUM

TO: The Commission

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AUG 28 2003

AGENDA ITEM
For Meeting of: 08-28-03

SUBMITTED LATE

SUBJECT: Amendments to Draft NPRM on Political Committee Mailing Lists

As the result of the Regulations Committee meeting on Tuesday, August 26, 2003 and comments from the Audit Division, the Office of General Counsel drafted the attached document which includes amendments to Agenda Document No. 03-66.

Amendments to Agenda Document No. 03-66

1. On page 7, lines 5-7, delete the question.
2. On page 14, line 6, add "donates or transfers its mailing list or" after "political committee".
3. On page 14, line 8, insert the following:

E. 11 CFR 110.21(d) - Rental or sale to the candidate

Proposed 11 CFR 110.21(e) would address situations where an authorized committee sells or rents its mailing list to the candidate who formed the authorized committee. The proposed rule would treat the amount paid by the candidate for the mailing list as a contribution from the candidate to the authorized committee in that amount. This provision would recognize that a transaction between these two parties is not at arm's length.

3. On page 14, line 8, delete the heading and replace with "F. 11 CFR 110.21(e) - Reporting of proceeds".
4. On page 14, delete lines 12-17.
5. On page 14, after line 17, add the following:

G. 11 CFR 110.21(f) - Recordkeeping

Proposed 11 CFR 110.21(f) would set forth the recordkeeping requirements associated with the sale or rental of a political committee's mailing list. Proposed paragraph (f)(1) would require that political committees maintain and make available the sales or rental agreements. These agreements must be signed and dated. Proposed paragraph (f)(2) would require documentation of the usual and normal charge for a political committee's mailing list. For a mailing list that is listed in the SRDS Direct Marketing Source, the political committee would need to retain a copy of the price list for its mailing list in the SRDS Direct Marketing Source under proposed paragraph (f)(2)(A). For a mailing list that is not listed in the SRDS Direct Marketing Source, the political committee would need to obtain a written appraisal from an independent entity. The Commission seeks comment on whether a written appraisal from an independent entity is the appropriate documentation of the usual and normal charge when a mailing list is not in the SRDS Direct Marketing Source. Are there other ways to document the usual and normal charge. Should the rules include more specific requirements regarding the independent entities, such as that they are in the business of appraising the fair market value of mailing lists? Do such entities exist?

6. On page 14, line 18, delete "G" and add in its place "H".

7. On page 20, line 4, place a paragraph break after "sale."
8. On page 20, line 13, add the following after the period:

The Commission also seeks comment on situations where the candidate owns a mailing list. If the authorized committee uses the mailing list, has it accepted a contribution from the candidate? How should the use be valued? Should the valuation be based on the sale or rental price for the mailing list? Additionally, how should this transaction be reported?

9. On page 22, line 6, add the following after "statement.":

However, the donation or transfer of the mailing list to another political committee (including the candidate's general election committee, the candidate's general election legal and accounting compliance fund (GELAC) or a leadership PAC) would be subject to proposed 11 CFR 110.21(c)(2), which would apply 11 CFR 100.52 to such transaction.

10. On page 22, line 6, delete "any other" and add in its place "donations or".

11. On page 22, line 8, add the following after "statements":

even if the donation or transfer is to the presidential candidate's GELAC or other authorized committees

12. On page 28, line 6, add "the donation or transfer of mailing lists or the" after "For".
13. On page 28, line 8, delete "(d)" and add in its place "(e)".
14. On page 28, line 11, delete "(e)" and add in its place "(d)".
15. On page 28, lines 11-13, move this paragraph to after line 7 on the same page.
16. On page 28, after line 13, add the following:

(f) Recordkeeping. A political committee shall maintain and make available upon request the documentation described in paragraphs (f)(1) and (2) of this section.

- (1) All sales and rental agreements or contracts of its mailing list(s).

The agreements must be signed and dated.

- (2) Documentation of the usual or normal charge for its mailing lists in the following manner:
- (A) If its mailing list is included in the SRDS Direct Marketing List Source, a copy of the price list in the SRDS Direct Marketing List Source; or
 - (B) If its mailing list is not included in the SRDS Direct Marketing List Source, a written appraisal of the mailing list from an independent entity that is not directly or indirectly associated with the political committee (including subcontractors of such entities).